CF 100 L (3)

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(CHHATTISGARH)

SECOND APPEAL NO. 644 OF 2003

APPELLANT (PLAINTIFF) : Baldu,son of paldu,aged about 48 years, Caste: Sahis,Occupation-Labourer,resident of Village-Bayang, Kirodimalnagar,Tehsil and District Raigarh,(C.G.)

V E R S U S

RESPONDENTS (DEFENDANTS) R-1. : Phool Chand,son of paldu,aged about 55 years.

R-2. : Gopi,son of Phool Chand,aged about 32 years,. Both are residents of Village-Bayang,Post-Kachhar,Tehsil and District-Raigarh,(C.G.)

RECEIVED-COPY 4-11-03 Clerk to A.G. Bilaspur

3. : State of Chhattisgarh,through Collector,Raigarh, District-Raigarh,(C.G.)

SECOND APPEAL UNDER SECTION 100 OF C.P.C.

(26)

HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench:- Hon'ble Shri Justice Dhirendra Mishra

Second Appeal No.644 of 2003

Appellant/ Plaintiff :- **Baldu**

Vs

Respondents/ Defendants :- **Phool Chand and others.**

Appellant by Shri H.S.Patel, Advocate.

JUDGEMENT
(Delivered on 24 03/2005)

Heard on admission.

2. The appellant has preferred this second appeal against the order dated 16.09.2003 passed by IInd A.D.J., Raigarh in Civil Appeal No. 79-A/2002, arising out of the judgment and decree dated 30.09.2002, passed by IVth Civil Judge, Class-II, Raigarh. (Parties hereinafter shall be described as per their description in the trial Court.)

3. Both the Courts below have dismissed the suit of the plaintiff by recording a finding that the plaintiff has failed to prove that he is the owner and possessor of the suit property and he has further failed to prove that defendants have encroached upon his house and property. Accordingly, the suit has been dismissed by the trial court which has been subsequently confirmed by the first Appellate Court.

4. During pendency of the appeal, the plaintiff filed an application under Order 41 Rule 27 of the C.P.C. for permission to file documents being certified copy of Khasra Panchshala for the year 2001-2002 of land bearing Khasra No. 226/1 area0.376 acre and Panchnama prepared by the village Patwari and the first Appellate Court dismissed the above application preferred under Order 41 Rule 27 of the C.P.C. and further dismissed the appeal of the plaintiff.

5. Learned counsel for the appellant/plaintiff submits that plaintiff and defendant No. 1 are real brothers and they were residing together in the suit accommodation after purchasing the same from one Munu Kumar some 35 years back. However, some 15-16 years back, the plaintiff left the suit house and came to Raigarh for earning livelihood. The defendants taking advantage of absence of the plaintiff encroached upon the suit property and dispossessed him.

6. Both the Courts below has disregarded this fact that the suit property is the joint property which is existing on the Abadi land and therefore, no record of right could be submitted by the plaintiff. However, the suit has been dismissed only on the ground that no record pertaining to the title of the property has been filed by the plaintiff and further that on the date of filing of the suit, the plaintiff was already dispossessed. On these two grounds, the suit has been dismissed by both the Courts below. As the suit is for perpetual injunction and in the absence of possession or title, the decree of perpetual injunction cannot be passed in favour of the plaintiff.

7. I have heard learned counsel for the appellant/plaintiff on admission.

8. Both the Courts below have arrived to a concurrent finding of fact that the plaintiff as failed to establish that he is the owner of the suit accommodation and the plaintiff and respondents/defendants are joint owners of the suit property by adducing any document. Further finding of both the Courts below is that on the date of institution of the suit, the plaintiff was already dispossessed.

9. Taking into consideration the above concurrent findings of facts of both the Courts below and further that there is no substantial question of law involved in this appeal for its adjudication, I am of the opinion that the appeal has to be dismissed at the motion stage itself and it is dismissed accordingly.

10. However, there shall be no order as to costs.

Sd/-
Dhirendra Mishra
Judge